

## **SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX -- OFFICER LIABILITY -- BURDEN OF PROOF MET** -- Petitioner who had no managerial authority on behalf of the corporate business during the assessment period may not be held personally liable for the consumers' sales and service tax debt of the corporation. See 110 C.S.R. 15, § 4a.5 (May 1, 1992).

## **FINAL DECISION**

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an estimated consumers' sales and service tax assessment against the Petitioner.

This assessment was for the period of July 1, 1996 through June 30, 2002, for tax, interest, through October 15, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked December 16, 2002, the Petitioner timely filed a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

Subsequently, written notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10.

## **FINDINGS OF FACT**

During the assessment period Petitioner's only connection with the corporate business was that she allowed the bar owner to use her name as a corporate officer although she never had anything whatsoever to do with the business.

## **DISCUSSION**

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

Although Petitioner admitted that she agreed to allow her name to be listed as a corporate officer, the record is clear that she had absolutely nothing to do with the business

during the period in question, and that she was issued no stock and received no dividends or anything else that could in anyway be considered compensation.

### **CONCLUSIONS OF LAW**

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (April 20, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proving that she had no managerial authority on behalf of the corporate business, but was an officer in name only. See 110 C.S.R. 15, § 4a.5 (May 1, 1992).

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and service tax assessment issued against the Petitioner for the period of July 1, 1996 through June 30, 2002, should be and is hereby **VACATED**, and the Petitioner personally owes no consumers' sales and service tax liability of the corporation for the period in question.